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**TITLE 326 AIR POLLUTION CONTROL BOARD**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #11-356

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING SULFUR DIOXIDE****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 7](#) concerning sulfur dioxide (SO<sub>2</sub>) emission limitations and monitoring. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 7](#).

**AUTHORITY:** [IC 13-14-18](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

The United States Environmental Protection Agency (U.S. EPA) issued a revised primary national ambient air quality standard (NAAQS) for sulfur dioxide in the June 22, 2010, Federal Register published at 75 FR 35520. The largest sources of SO<sub>2</sub> emissions are from fossil fuel combustion at power plants and other industrial facilities. Smaller sources of SO<sub>2</sub> emissions include industrial processes, such as extracting metal from ore, and the burning of high sulfur containing fuels by locomotives, large ships, and nonroad equipment.

U.S. EPA first established standards for SO<sub>2</sub> in 1971, setting a 24-hour primary standard at 140 parts per billion (ppb) and an annual average standard at 30 ppb to protect health. U.S. EPA also set a 3-hour average secondary standard at 500 ppb to protect public welfare. Based on new studies, U.S. EPA determined that the 1971 24-hour and annual primary standards are not sufficient to protect public health with an adequate margin of safety. Therefore, with the final rule published in the June 22, 2010, Federal Register, U.S. EPA strengthened the NAAQS for SO<sub>2</sub> by establishing a new 1-hour standard at a level of 75 ppb to reduce human exposure to high short-term (five minutes to 24 hours) concentrations of SO<sub>2</sub>. U.S. EPA revoked the two existing primary standards (140 ppb 24-hour standard and 30 ppb annual average standard) and kept the secondary standard.

U.S. EPA also set a new form for the standard. This new form is the 3-year average of the 99th percentile of the annual distribution of daily maximum 1-hour average concentrations. U.S. EPA is also revising the ambient air monitoring requirements for SO<sub>2</sub>. States will need to make adjustments to the existing monitoring network in order to ensure that monitors meeting the network design regulations for the new 1-hour SO<sub>2</sub> standard are sited and operational by January 1, 2013.

IDEM amended [326 IAC 1-3-4](#) in 2010 (LSA Document #10-495) to incorporate the revised standard into the state rule. This rulemaking will revise emission limitations and monitoring requirements in [326 IAC 7](#) to address state implementation plan (SIP) development requirements for counties designated as nonattainment or unclassifiable for the new 1-hour standard. States were required to submit their initial area designation recommendations to U.S. EPA no later than June 2, 2011, and final area designation decisions will be made by U.S. EPA in 2012 based on data from SO<sub>2</sub> monitors currently in place and any refined modeling by states. Preliminary analysis indicates that Indiana has nine counties with monitored violations of the 1-hour standard, and at least one additional county contributing to a monitored violation in an adjacent county. Modeling analyses that Indiana is currently undertaking will be used to evaluate how various counties should be designated. Emission limits in [326 IAC 7](#) will need to be revised or added for sources located in counties designated as nonattainment, or unclassifiable. In order to address a short-term standard, IDEM is also considering revising the SO<sub>2</sub> monitoring requirements in [326 IAC 7](#) to address the monitoring requirements that will be necessary for the new 1-hour SO<sub>2</sub> NAAQS. IDEM is starting this rulemaking while the analysis continues and requirements are further refined. IDEM will also update [326 IAC 7](#) because many of the sources listed in [326 IAC 7](#) are now closed.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Amend/add emission limitations and monitoring requirements to [326 IAC 7](#) as needed to address the new federal 1-hour SO<sub>2</sub> NAAQS.

- Is this alternative an incorporation<sup>2</sup> of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? Federal law does not detail the exact emission controls needed to address nonattainment counties. Emission controls and monitoring requirements proposed in this rulemaking will be based on federal guidance.
- If it is different, describe the differences. Not applicable.

Alternative 2. Do not amend [326 IAC 7](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.

- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. This alternative would be different from federal law because it would not allow the state to amend [326 IAC 7](#) as needed to comply with federal law.

#### **Applicable Federal Law**

The revised primary NAAQS for SO<sub>2</sub> published in the June 22, 2010, Federal Register (75 FR 35520) and any additional implementation guidance developed by U.S. EPA will be used to develop applicable emission limitations and monitoring requirements for sources that emit SO<sub>2</sub> in Indiana.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. IDEM cannot quantify the fiscal impact of this rulemaking at this time. As emission limitations and monitoring requirements are developed, IDEM will evaluate the fiscal impact of the proposed requirements. Affected sources may need to install additional air pollution control devices to meet the requirements proposed.

Potential Fiscal Impact of Alternative 2. There is no fiscal impact associated with this alternative. IDEM is required by federal law to address the revised 1-hour SO<sub>2</sub> standard.

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

<http://www.in.gov/idem/ctap>. <http://www.in.gov/idem/4108.htm>

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Alison Beumer  
IDEM Compliance and Technical Assistance Program - OPPTA  
MC 60-04 IGCS W041  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Ryan Asberry  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 232-8962  
[smallbizombudsman@iedc.in.gov](mailto:smallbizombudsman@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 IGCN 1307  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386  
[bbaughn@idem.in.gov](mailto:bbaughn@idem.in.gov)

#### **Public Participation and Workgroup Information**

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana).

#### **STATUTORY AND REGULATORY REQUIREMENTS**

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.

- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#11-356 (APCB) 1-Hour SO<sub>2</sub> Rule  
Susan Bem Mail Code 61-50  
Rule and SIP Development Section  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5967, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

#### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by July 29, 2011.

Additional information regarding this action may be obtained from Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief  
Air Programs Branch  
Office of Air Quality

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